

2005 DRAFTING REQUEST

Bill

Received: **02/22/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **David Zien (608) 266-7511**

By/Representing: **Brian Deschane**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Liens**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Zien@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Construction liens

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L Crime
/1	mkunkel 04/20/2005	kfollett 04/22/2005	rschluet 04/22/2005	_____	mbarman 04/22/2005		S&L Crime
/2	mkunkel 10/04/2005	kfollett 10/06/2005	rschluet 10/06/2005	_____	lnorthro 10/06/2005		S&L Crime
/3	mkunkel	kfollett	pgreensl	_____	lnorthro	mbarman	S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	11/10/2005	11/11/2005	11/11/2005 _____		11/11/2005	11/17/2005	Crime

FE Sent For: *at intro*
11/23

<END>

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13 KGF
11/10
W
11/10
P8/15

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/1	mkunkel 04/20/2005	kfollett 04/22/2005	rschluet 04/22/2005		mbarman 04/22/2005		S&L Crime

FE Sent For:

12/gjf
10/6
1060
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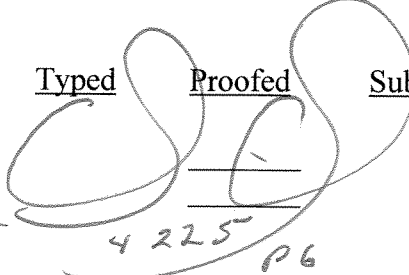

Construction liens

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/?	mkunkel	1/15/05 4/22					
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FE Sent For:

<END>

Kunkel, Mark

From: Deschane, Brian
Sent: Tuesday, February 22, 2005 2:59 PM
To: Kunkel, Mark
Subject: RE: Lien Law Changes to be drafted

I did, sorry about that...



Draft
Submission.doc

From: Kunkel, Mark
Sent: Tuesday, February 22, 2005 2:58 PM
To: Deschane, Brian
Subject: RE: Lien Law Changes to be drafted

Brian: I think you attached the wrong document.

-- Mark

-----Original Message-----

From: Deschane, Brian
Sent: Tuesday, February 22, 2005 2:57 PM
To: Kunkel, Mark
Subject: Lien Law Changes to be drafted

Mark,

If you have any questions, just let me know!

Brian Deschane
Legislative Aid
Senator Dave Zien

<< File: 05-10261.pdf >>

STATE BAR OF WISCONSIN
CONSTRUCTION & PUBLIC CONTRACT SECTION
LIEN LAW SUBCOMMITTEE

Lien Statutory Modification Recommendations

(approved for circulation 7/7/04)

1. Definition of "Improvement" - §799.01(2)(a) - Modify the definition of work to expressly include repair and remodeling work.

"(a) "Improve" and "improvement" includes any building, structure, erection, fixture, demolition, alteration, excavation, filling, grading, tiling, planting, clearing, [] landscaping, **repair or remodeling** which is built, erected, made or done on or to land for its [] benefit. This enumeration is intended as an extension rather than a limitation of the normal meaning and scope of "improve" and "improvement."

2. Method of Service for Lien Notices - §779.01(2)(e) [new] - Add a new subsection defining methods of service (including certified mail and service of process) in addition to "registered mail, return receipt requested."

"(e) "serve" or "served" means personal delivery, delivery by registered or certified mail, service as provided in s. 801.14, or via any other means of delivery by which a written delivery confirmation is made by a party of than the lien claimant or their attorney."

Harmonize references to "by registered mail," "registered mail, with return receipt requested" and "shall notify . . . in writing" by changing to "serve" or "served" in:

- §779.02(2)(a)&(b)
- §779.02(3)
- §779.036(1),(2),(3)&(4)(a)
- §779.06(2)
- §779.015(2)

3. Scope of Lienable Work - §779.01(3), §779.14(1e) & §779.15 - Harmonize descriptions of the types of work that are lienable for private and public lien claims.

"779.01(3) EXTENT AND CHARACTER OF LIEN. Every person who performs any work or procures its performance of furnishes any plans or specifications or labor or materials **to be used or consumed** for the improvement of land, **including, without limitation because of enumeration, fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's compensation insurance and contributions for unemployment insurance,** and who complies with s. 779.02 shall have a lien therefor on all interests in the land belonging to its owners. The lien extends to all contiguous land of the owner, but if the improvement is located wholly on one or more platted lots belonging to the owner, the lien applies on to the lots on which the improvement is located."

"779.15(1) PUBLIC IMPROVEMENTS; LIEN ON CONTRACTOR; DUTY OF OFFICIALS. Any person furnishing **any plans or specifications or** labor or materials **to be used or consumed in making public improvements or performing public work, including, without limitation because of enumeration,** fuel, lumber, **building materials,** machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electrical energy, gasoline, motor oil, lubricating oil, greases, state-imposed taxes, premiums for worker's compensation insurance and contributions for unemployment insurance, to a prime contractor, except in cities of the 1st class, shall have a lien on the money or bonds or warrants due or to become due the

prime contractor therefor, if the lienor, before payment is made to the prime contractor, gives a written notice to the debtor state, county, town or municipality of the claim. . . ."

"779.14(1e) CONTRACT REQUIREMENTS REGARDING DUTIES OF PRIME CONTRACTOR. (a) All contracts involving \$10,000 or more for **furnishing any plans or specifications or** labor or materials when the same pertains to any public improvement or public work shall contain a provision for the payment by the prime contractor of all claims for labor performed and materials furnished, used or consumed in making the public improvement or performing the public work, including, without limitation because of enumeration, fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electrical energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's compensation insurance and contributions for unemployment insurance.

"(2)(e) "Serve" or "service" means personal delivery, or delivery by registered or certified mail, or by service as provided in s. 801.11."

Harmonize references in:

- §779.02(2)(a) and (b) and (3)
- §779.036(1) and (2) and (3) and (4a)
- §779.06(2)
- §779.15(2)

4. 10,000 Square Foot Exception - §779.02(1)(c) – Remove the requirement for an initial lien notice within 60 days of a subcontractor's work commencing on non-residential projects (i.e., more than a four family residential and all commercial projects).

"(c) By any lien claimant furnishing labor or materials for an improvement in any case where more than 4 family living units are to be provided or added by such work of improvement, if the improvement is wholly residential in character, or in any case where ~~more than 10,000 total usable square feet of floor space is to be provided or added by such work of improvement~~, if the improvement is partly or wholly nonresidential in character."

5. Late Prime Contractor Lien Notice - §779.02(2)(c) – Clarify that a prime contractor must have none of its own subcontractors or suppliers file a lien notice, rather than all subcontractors and suppliers that may have worked on the project (e.g., in a construction managed or multi-prime project delivery) not file a lien, to permit the prime to assert a lien claim in the absence of its initial lien notice to the owner.

"(c) If any prime contractor required to give the notice prescribed in par. (a) fails to give notice as required, such contractor does not have the lien and remedy provided by this subchapter unless the contractor pays all of the contractor's obligations to its subcontractors and suppliers in respect to the work of improvement within the time periods under s. 779.06 and until the time for notice under par. (b) has elapsed and ~~no lien claimant~~ none of its subcontractors or suppliers under par. (b) gives notice as a lien claimant."

6. Conveying Claim for Lien to Owner - §779.06(1) – In addition to filing the Claim for Lien with the Clerk of Courts in the County where the improved real property is located, a copy of the filed Claim for Lien would be sent to the property owner.

"(1) No lien under s. 779.01 shall exist and no action to enforce a lien under s. 779.01 shall be maintained unless within 6 months from the date the lien claimant furnished the last labor or materials a claim for the lien is filed in the office of the clerk of circuit court of the county in which the lands affected by the lien lie, and unless within 2 years from the date of filing a claim for lien an action is brought and summons and complaint filed. The lien claimant shall serve a copy of the claim for lien on the owner of the property on which the lien is placed within 30 days after filing it. A claim for a lien may be filed and entered in the judgment and lien docket, and action brought, notwithstanding the death of the owner of the property affected by the action or of the person with whom the original contract was made, with like effect as if he or she were then living."

7. Lien Removal by Undertaking of Single Surety - §779.08(1) – Rather than requiring two sureties to post bonds, a single surety meeting the requirements of this section would be required to remove a Claim for Lien from the Clerk of Court's docket. The Clerk of Courts is expressly directed to remove the Lien upon issuance of the Court's Order approving the surety.

"(1) The person against whom a lien is claimed or any other interested party may file with the clerk of court in whose office the claim for lien is filed an undertaking executed by ~~2 or more sufficient sureties~~ a surety to the effect that the person against whom the lien is claimed shall pay the amount of the claim and all costs and damages which may be awarded against that person on account of the lien or in lieu thereof deposit with the clerk of the court a sum of money, certified check or negotiable government bonds in par value equal to 125% of the claim for lien. The court in which any action to foreclose the lien may be brought shall determine any question of sufficiency of the ~~sureties~~ surety if exception is taken thereto by the lien claimant within 10 days after notice of the filing of such undertaking or deposit of other security and may upon notice and upon motion of any party, order any sum of money deposited to be invested. The clerk of courts shall remove the lien from the judgment and lien docket upon court's order approving the surety bond in substitution for the lien. The depositor shall be entitled to any income from the investments, certified check or negotiable U.S. government bonds deposited and the clerk shall pay the income to the depositor without order when received or, in the case of coupons, as the income becomes due.

(2) If an undertaking is furnished, it shall be accompanied by the ~~affidavits of the sureties in which each affidavit of the surety which it~~ states that the surety is worth, over and above all debts and liabilities in property within this state not exempt from execution, an amount in the aggregate equal to 125% or more of the amount of the claim for lien."

8. Theft By Contractor Provisions - §§779.02(5) & 779.16 – Both private and public theft by contractor provisions are intended to address the same kind of sanctioned conduct; these changes harmonize the requirements under both provisions and clarify that this conduct is not permitted by any business entity, whether structured as a corporation, limited liability company, or other legal relationships.

"779.02 Notice required to preserve lien rights; exceptions; saving clause; obligations of contractors.

(5) THEFT BY CONTRACTORS. The proceeds of any mortgage on land paid to any prime contractor or any subcontractor for improvements upon the mortgaged premises, and all moneys paid to any prime contractor or subcontractor by any owner for improvements, constitute a trust fund only in the hands of the prime contractor or subcontractor to the amount of all claims due or to become due or owing from the prime contractor or subcontractor for labor and materials used for the improvements, until all the claims have been paid, and shall not be a trust fund in the hands of any other person. The use of any such moneys by any prime contractor or subcontractor for any other purpose until all claims, except those which are the subject of a bona fide dispute and then only to the extent of the amount actually in dispute, have been paid in full or proportionally in cases of a deficiency, is theft by the contractor or subcontractor of moneys so misappropriated and is punishable under s. 943.20. If the prime contractor or subcontractor is a corporation, limited liability company or other legal entity than a sole proprietorship, such misappropriation also shall be deemed theft by any officers, directors, members, partners, or agents [of the corporation] responsible for the misappropriation. Any of such misappropriated moneys which have been received as salary, dividend, loan repayment, capital distribution or otherwise by any shareholder, member or partner [of the corporation] not responsible for the misappropriation shall be a civil liability of [the shareholder] that person and may be recovered and restored to the trust fund specified in this subsection by action brought by any interested party for that purpose. Except as provided in this subsection, this section does not create a civil cause of action against any [other] person other than the prime contractor or subcontractor to whom such moneys are paid. Until all claims are paid in full, have matured by notice and filing or have expired, such proceeds and moneys shall not be subject to garnishment, execution, levy or attachment.

"779.16 Theft by contractors. All moneys, bonds or warrants paid or to become due to any prime contractor or subcontractor for public improvements are a trust fund only in the hands of the prime contractor or subcontractor to the amount of all claims due or to become due or owing from the prime

contractor or subcontractor for labor and materials used for the improvements, until all the claims have been paid **and shall not be a trust fund in the hands of any other person. The use of [the] any such moneys by any [the] prime contractor or subcontractor for any other purpose [other than the payment of claims on such public improvement, before the claims have been satisfied.]** until all claims, except those which are the subject of a bona fide dispute and then only to the extent of the amount actually in dispute, have been paid in full or proportionally in cases of a deficiency. **[constitutes] is theft by the prime contractor or subcontractor of moneys so misappropriated and is punishable under s. 943.20.** If the prime contractor or subcontractor is a corporation, **limited liability company or other legal entity than a sole proprietorship,** such misappropriation also shall be deemed theft by any officers, directors, **members, partners,** or agents **[of the corporation]** responsible for the misappropriation. Any of such misappropriated moneys which have been received as salary, dividend, loan repayment, capital distribution or otherwise by any shareholder, **member or partner** **[of the corporation]** not responsible for the misappropriation shall be a civil liability of **[the shareholder]** **that person** and may be recovered and restored to the trust fund specified in this subsection by action brought by any interested party for that purpose. Except as provided in this subsection, **[T]his section shall not create a civil cause of action against any person other than the prime contractor or subcontractor to whom such moneys are paid or become due. Until all claims are paid in full, have matured by notice and filing or have expired, such money, bonds and warrants shall not be subject to garnishment, execution, levy or attachment.**

9. Public Lien Notice of Dispute - §779.15(3) – In addition to the prime contractor serving notice of dispute with a lien claimant's claim on public funds, the prime contractor would convey a copy of the notice of dispute to the lien claimant.

"(3) If a valid lien exists under sub (1) and the prime contractor does not dispute the claim within 30 days after service on the prime contractor of the notice provided in sub (2), by written notice to the debtor state, county, town or municipality and the lien claimant, the amount claimed shall be paid over to the claimant on demand and charged to the prime contractor pursuant to sub. (1). If the prime contractor disputes the claim, the right to a lien and to the moneys in question shall be determined in an action brought by the claimant or the prime contractor. If the action is not brought within 3 months from the time the notice required by sub. (1) is served, and notice of bringing the action filed with the officer with whom the claim is filed, the lien rights are barred."

10. Apportionment of Funds to Multiple Lien Claimants - §779.15(4)(a) – Harmonize the public project owner's obligation to proportionately distribute funds when the total of all lien claims exceeds the balance of the contract price held by the owner consistent with the private project owner obligation under §779.036(4)(a).

"779.15(4)(a) When the total of the lien claims exceeds the sum due the prime contractor and where the prime contractor has not disputed the amounts of the claims filed, the debtor state, county town or municipality, through the officer, board, department or commission with whom the claims are filed, shall determine **on a proportional basis** who is entitled to the money and shall notify all claimants and the prime contractor in writing of the determination. Unless an action is commenced by a claimant or by the prime contractor or subcontractor within 20 days after the mailing of said notice the money shall be paid out in accordance with the determination and the liability of the owner and lender to any claimant shall cease."

11. Suppliers – Throughout Chapter 779, due to the variety of dates of enactment over a 40+ year period, suppliers are called "materialmen," "material suppliers," and "suppliers" in various sections. This change will harmonize all such references to the term "suppliers."

Harmonize references in:

- §779.01(5) ✓
- §779.02(2) ✓
- §779.02(2)(a), (c), & (e) ✓
- §779.035(3)
- §779.135(1) ✓



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2227/1

MDK:LC

NOTE

2005 BILL

- 4/22
Friday, PM
- Gen
- 1 AN ACT ...; relating to: construction liens, requirements for securing payment
2 for work on publicly financed projects, and providing a penalty.

Analysis by the Legislative Reference Bureau

X
Current law allows persons (such as prime contractors, subcontractors, and suppliers) who do work or furnish materials for improvements to real estate to file liens on the real estate to secure their right to payment. These liens are generally referred to as "construction liens". Under current law, construction liens are available on projects that do not involve public financing. Current law imposes different requirements for securing payment for work performed or materials furnished for projects that are publicly financed.

This bill makes the following changes to construction liens and the requirements that apply to publicly financed projects:

Repairs and remodeling. Under current law, a person may claim a construction lien for an "improvement" to real estate, which is defined as any building, structure, erection, demolition, alteration, excavation, filling, grading, tiling, planting, or landscaping that is done on or to land for its permanent benefit. This bill expands the definition to also include repairing or remodeling that is done on or to land for its benefit. The bill also eliminates the requirement that an improvement must be for the permanent benefit of the land.

X
Construction liens for specified materials. The requirements under current law for publicly financed projects apply to persons who furnish material used or consumed in making a publicly financed improvement, including any of the following: fuel, lumber, building materials, machinery, vehicles, tractors, equipment,

BILL

fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's compensation insurance, and contributions for unemployment insurance. Under current law, construction liens may be claimed for materials furnished for improving land, but current law does not specify the foregoing materials. This bill specifies that a construction lien may be claimed for the foregoing materials that are used or consumed for an improvement to real estate.

Plans and specifications. Current law allows a person to claim a construction lien for labor that the person performs, or materials, plans, or specifications, that the person provides, for an improvement to real estate. However, in referring to labor and materials, current law does not consistently also refer to plans and specifications. This bill corrects the references to refer to plans and specifications. The bill also amends the requirements regarding publicly financed projects so that they consistently refer to plans and specifications, as well as labor and materials.

~~Sixty~~ **60-day and 10-day notices.** Under current law, a subcontractor or supplier who works or furnishes material for certain improvements to real estate is not allowed to make a claim for a construction lien unless, within 60 days after first performing work or furnishing material for the project, the subcontractor or supplier has provided the owner of the real estate a notice specified under current law. The improvements that this notice requirement applies to are the following: 1) a wholly residential improvement in which ~~4~~^{ten} or less family living units are provided or added; and 2) a partly or wholly nonresidential improvement in which 10,000 or less total usable square feet ~~is~~^{are} provided or added. A prime contractor must also give a notice to the owner in order to claim a construction lien for the foregoing types of improvements. If the contractor does not include the notice in the contract with the owner, the prime contractor must provide the notice within ~~10~~^{ten} days after labor or materials are furnished. If the prime contractor does not provide the notice, the prime contractor may claim a construction lien only if certain other requirements are satisfied.

~~ten~~ Under the bill, for a wholly residential improvement described above, a subcontractor or supplier must provide the 60-day notice and the prime contractor must provide the ~~10~~^{ten}-day notice. However, notice by a subcontractor, supplier, or prime contractor is not required for any wholly or partly nonresidential improvement, regardless of the square footage of usable floor space that is added or provided.

In addition, under the bill, if a ~~10~~^{ten}-day notice is required and the prime contractor does not provide the notice, the prime contractor may claim a construction lien, but only if the prime contractor's subcontractors and suppliers have been paid and none of the prime contractor's subcontractors or suppliers have provided the 60-day notice to the owner. Current law also allows a prime contractor to claim a construction lien under these circumstances, except that current law refers to subcontractors and suppliers, rather than specifically referring to the prime contractor's subcontractors and suppliers.

BILL

Service of notice. Current law contains various notice requirements for construction liens and publicly financed projects. Under this bill, any duty to provide notice regarding a construction lien or a publicly financed project may be accomplished by serving the notice on a party in any of the following ways: 1) by personal delivery; 2) by registered or certified mail; 3) in the same manner that is required under current law for service of a summons in circuit court; or 4) by any other means of delivery in which the party receiving the notice makes written confirmation of the delivery.

Other changes. The bill makes other changes, including the following:

1. Under current law, a person may not bring an action to enforce a construction lien on real estate unless, within 6 months from the date the person last performed work or furnished materials, the person files a claim for the lien with the circuit court. This bill requires a person to serve a copy of the claim on the owner of the real estate within 30 days after filing the claim with the circuit court.

2. Under current law, under certain circumstances, an owner of real estate or other interested party may release a construction lien from the real estate by substituting 2 sureties for the lien. This bill requires only one surety.

3. Under current law, prime contractors and subcontractors on both privately and publicly financed projects must hold certain moneys in trust for the payment of claims for labor and materials. Failure to comply with this requirement is theft. Under this bill, if the prime contractor or subcontractor is a business entity, specified individuals who represent the entity may also be guilty of theft.

4. Current law allows a prime contractor on a publicly financed project to dispute a claim for payment by a subcontractor or supplier. If the prime contractor disputes the claim, the prime contractor must provide written notice of the dispute to the governmental body contracting for the work. This bill requires the prime contractor also to provide written notice of the dispute to the subcontractor or supplier.

5. Under current law, persons who supply material for an improvement are referred to as suppliers, materialmen, or material suppliers. Under this bill, such persons are consistently referred to as "suppliers".

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

SECTION 1

1 59.40 (2) (f) Keep a judgment and lien docket of all claims for liens filed by
2 contractors, subcontractors, ~~materialmen~~ [✓]suppliers, and laborers and all claims filed
3 for log, mining, and maintenance liens.

History: 1995 a. 27 ss. 3290, 3291; 1995 a. 201 ss. 311 to 318, 320 to 322, 325; 1995 a. 224 ss. 11 to 13; 1995 a. 227 s. 203; 1995 a. 279 s. 8; 1995 a. 404 s. 185; 1995 a. 438; 1995 a. 448 s. 61; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 3, 27; 1997 a. 35 ss. 185, 186; 1997 a. 39, 135, 148, 191, 237, 248, 252; 1999 a. 9, 32; 1999 a. 150 s. 672; 2001 a. 16, 56, 61, 105; 2003 a. 33, 139, 321, 326.

4 **SECTION 2.** 66.0901 (2) of the statutes is amended to read:

5 66.0901 (2) BIDDER'S PROOF OF RESPONSIBILITY. A municipality intending to enter
6 into a public contract may, before delivering any form for bid proposals, plans, and
7 specifications to any person, except ~~materialmen~~ [✓]suppliers, and others not
8 intending to submit a direct bid, require the person to submit a full and complete
9 statement sworn to before an officer authorized by law to administer oaths. The
10 statement shall consist of information relating to financial ability, equipment,
11 experience in the work prescribed in the public contract, and other matters that the
12 municipality requires for the protection and welfare of the public in the performance
13 of a public contract. The statement shall be in writing on a standard form of a
14 questionnaire that is adopted and furnished by the municipality. The statement
15 shall be filed in the manner and place designated by the municipality. The statement
16 shall not be received less than 5 days prior to the time set for the opening of bids.
17 The contents of the statement shall be confidential and may not be disclosed except
18 upon the written order of the person furnishing the statement, for necessary use by
19 the public body in qualifying the person, or in cases of actions against, or by, the
20 person or municipality. The governing body of the municipality or the committee,
21 board, or employee charged with, or delegated by the governing body with, the duty
22 of receiving bids and awarding contracts shall properly evaluate the statement and

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1 shall find the maker of the statement either qualified or unqualified. This subsection
2 does not apply to a 1st class city.

History: 1971 c. 154; 1975 c. 390; 1983 a. 27; 1991 a. 316; 1993 a. 112, 399, 490, 491; 1999 a. 150 ss. 257, 258, 328 to 334; Stats. 1999 s. 66.0901; 1999 a. 186 s. 50; 2001 a. 103; 2003 a. 157.

3 **SECTION 3.** 703.22 (title) of the statutes is amended to read:

4 **703.22 (title) Mechanics' and materialmen's suppliers' liens.**

History: 1977 c. 407; 1979 c. 32 s. 92 (9).

5 **SECTION 4.** 703.22 (2) of the statutes is amended to read:

6 703.22 (2) Any mechanics' lien or materialmen's suppliers' lien arising as a
7 result of repairs to or improvements of a unit by a unit owner shall be a lien only
8 against the unit.

History: 1977 c. 407; 1979 c. 32 s. 92 (9).

9 **SECTION 5.** 703.22 (3) of the statutes is amended to read:

10 703.22 (3) Any mechanics' or materialmen's suppliers' lien arising as a result
11 of repairs to or improvements of the common elements, if authorized in writing by
12 the association, shall be paid by the association as a common expense and until paid
13 shall be a lien against each unit in proportion to its percentage interest in the
14 common elements. On payment of the proportionate amount by any unit owner to
15 the lienor or on the filing of a written undertaking in the manner specified by s.
16 779.08, the unit owner shall be entitled to a release of his or her unit from the lien
17 and the association shall not be entitled to assess his or her unit for payment of the
18 remaining amount due for the repairs or improvements.

History: 1977 c. 407; 1979 c. 32 s. 92 (9).

19 **SECTION 6.** 779.01 (2) (a) of the statutes is amended to read:

20 779.01 (2) (a) "Improve" or "improvement" includes any building, structure,
21 erection, fixture, demolition, alteration, excavation, filling, grading, tiling, planting,
22 clearing ~~or~~, landscaping, repairing, or remodeling which is built, erected, made or
23 done on or to land for its permanent benefit. This enumeration is intended as an

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SECTION 6

1 extension rather than a limitation of the normal meaning and scope of "improve" and
2 "improvement".

3 History: 1973 c. 231; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.01; 1983 a. 189; 1993 a. 453; 1995 a. 225, 227; 1997 a. 27, 35, 44, 252.

4 **SECTION 7.** 779.01 (2) (e) of the statutes is created to read:

5 779.01 (2) (e) "Serve" or "served" means personal delivery, delivery by
6 registered or certified mail, service in a manner described for service of a summons
7 under s. 801.11, or any other means of delivery in which the recipient makes written
8 confirmation of the delivery.

9 **SECTION 8.** 779.01 (3) of the statutes is amended to read:

10 779.01 (3) EXTENT AND CHARACTER OF LIEN. Every person who performs any work
11 or procures its performance or furnishes any labor ~~or~~, materials ~~or~~, plans, or
12 specifications, used or consumed for the improvement of land, including fuel, lumber,
13 building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus,
14 tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil,
15 greases, state imposed taxes, premiums for worker's compensation insurance, and
16 contributions for unemployment insurance, and who complies with s. 779.02, shall
17 have a lien therefor on all interests in the land belonging to its owners. The lien
18 extends to all contiguous land of the owner, but if the improvement is located wholly
19 on one or more platted lots belonging to the owner, the lien applies only to the lots
20 on which the improvement is located.

21 History: 1973 c. 231; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.01; 1983 a. 189; 1993 a. 453; 1995 a. 225, 227; 1997 a. 27, 35, 44, 252.

22 **SECTION 9.** 779.01 (5) of the statutes is amended to read:

23 779.01 (5) ASSIGNMENT OF LIEN, GARNISHMENT. Assignment of a claim or right
24 to a lien or any part thereof by a prime contractor, or garnishment by the creditor of
25 a prime contractor, subcontractor, materialman supplier, laborer or mechanic, shall
26 not operate to compel the owner, prime contractor, subcontractor or ~~materialman~~

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1 supplier to pay the assignee or creditor until the lien claims of subcontractors,
2 materialmen suppliers and laborers under this subchapter have either been paid in
3 full, matured by notice and filing or expired. If such claims become liens, the owner,
4 prime contractor, subcontractor or materialman supplier shall be compelled to pay
5 such assignee or creditor only what remains due in excess of such liens.

History: 1973 c. 231; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.01; 1983 a. 189; 1993 a. 453; 1995 a. 225, 227; 1997 a. 27, 35, 44, 252.

6 **SECTION 10.** 779.02 (1) (c) of the statutes is amended to read:

7 779.02 (1) (c) By any lien claimant furnishing labor ~~or~~, materials, plans, or
8 specifications for an improvement in any case where more than 4 family living units
9 are to be provided or added by such work of improvement, if the improvement is
10 wholly residential in character, or in any case where ~~more than 10,000 total usable~~
11 ~~square feet of floor space is to be provided or added by such work of improvement,~~
12 if the improvement is partly or wholly nonresidential in character.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

13 **SECTION 11.** 779.02 (1) (e) of the statutes is amended to read:

14 779.02 (1) (e) By any lien claimant, other than a prime contractor, who
15 furnishes labor ~~or~~, materials, plans, or specifications for an improvement on a project
16 on which the prime contractor is not required to give notice under this section.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

17 **SECTION 12.** 779.02 (2) (a) of the statutes is amended to read:

18 779.02 (2) (a) Every prime contractor who enters into a contract with the owner
19 for a work of improvement on the owner's land and who has contracted or will
20 contract with any subcontractors or materialmen suppliers to provide labor ~~or~~,
21 materials, plans, or specifications for the work of improvement shall include in any
22 written contract with the owner the notice required by this paragraph, and shall
23 provide the owner with a copy of the written contract. If no written contract for the
24 work of improvement is entered into, the notice shall be prepared separately and

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SECTION 12

1 served ~~personally or by registered mail~~ on the owner or authorized agent within 10
2 days after the first labor ~~or~~, materials, plans, or specifications are furnished for the
3 improvement by or pursuant to the authority of the prime contractor. The notice,
4 whether included in a written contract or separately given, shall be in at least
5 8-point bold type, if printed, or in capital letters, if typewritten. It shall be in
6 substantially the following language: "As required by the Wisconsin construction
7 lien law, builder hereby notifies owner that persons or companies furnishing labor
8 ~~or~~, materials, plans, or specifications for the construction on owner's land may have
9 lien rights on owner's land and buildings if not paid. Those entitled to lien rights,
10 in addition to the undersigned builder, are those who contract directly with the owner
11 or those who give the owner notice within 60 days after they first furnish labor ~~or~~,
12 materials, plans, or specifications for the construction. Accordingly, owner probably
13 will receive notices from those who furnish labor ~~or~~, materials, plans, or
14 specifications for the construction, and should give a copy of each notice received to
15 the mortgage lender, if any. Builder agrees to cooperate with the owner and the
16 owner's lender, if any, to see that all potential lien claimants are duly paid".

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

17 **SECTION 13.** 779.02 (2) (b) of the statutes is amended to read:

18 779.02 (2) (b) Every person other than a prime contractor who furnishes labor
19 ~~or~~, materials, plans, or specifications for an improvement shall have the lien and
20 remedy under this subchapter only if within 60 days after furnishing the first labor
21 ~~or~~, materials, plans, or specifications the person gives serves a written notice in
22 writing, in 2 signed copies, ~~to the owner either by personal service on the owner or~~
23 ~~authorized agent or by registered mail with return receipt requested to the owner or~~
24 ~~authorized agent at the last known post-office address.~~ The owner or agent shall

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1 provide a copy of the notice received, within 10 days after receipt, to any mortgage
2 lender who is furnishing or is to furnish funds for construction of the improvement
3 to which the notice relates. The notice to the owner shall be in substantially the
4 following language, with blanks accurately filled in: "As a part of your construction
5 contract, your contractor or builder has already advised you that those who furnish
6 labor ~~or~~, materials, plans, or specifications for the work will be notifying you. The
7 undersigned first furnished labor ~~or~~, materials, plans, or specifications on (give
8 date) for the improvement now under construction on your real estate at (give
9 legal description, street address or other clear description). Please give your
10 mortgage lender the extra copy of this notice within 10 days after you receive this,
11 so your lender, too, will know that the undersigned is included in the job".

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

12 **SECTION 14.** 779.02 (2) (c) of the statutes is amended to read:

13 779.02 (2) (c) If any prime contractor required to give the notice prescribed in
14 par. (a) fails to give notice as required, such contractor does not have the lien and
15 remedy provided by this subchapter unless the contractor pays all of the contractor's
16 obligations to its subcontractors and ~~materialmen~~ suppliers in respect to the work
17 of improvement within the time periods under s. 779.06 and until the time for notice
18 under par. (b) has elapsed and ~~no lien claimant~~ none of its subcontractors or suppliers
19 gives notice as a lien claimant under par. (b) ~~gives notice~~.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

20 **SECTION 15.** 779.02 (2) (e) of the statutes is amended to read:

21 779.02 (2) (e) If the owner or lender complains of any insufficiency of any notice,
22 the burden of proof is upon the owner or lender to show that he or she has been misled
23 or deceived by the insufficiency. If there is more than one owner, giving the notice
24 required to any one owner or authorized agent is sufficient. In addition, every prime

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1 contractor and subcontractor, at the time of purchasing or contracting for any
2 materials to be used in any of the cases enumerated in s. 779.01, shall upon request
3 deliver to the ~~materialman~~ supplier a description of the real estate upon which the
4 materials are to be used and the name and post-office address of the owner and
5 authorized agent, if any. Failure to receive such description and name and address
6 does not relieve a ~~materialman~~ supplier who asserts a lien from the requirement of
7 giving timely notice.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

8 **SECTION 16.** 779.02 (3) of the statutes is amended to read:

9 779.02 (3) FAILURE TO GIVE NOTICE; SAVING CLAUSE. Any lien claimant, other than
10 the prime contractor, who fails to give a notice as required by sub. (2) (b) shall have
11 no lien on the land or improvement to which the failure relates. Any claimant who
12 serves a late but otherwise proper notice ~~personally or by registered mail~~ on the
13 owner or authorized agent shall have the lien provided by s. 779.01 for any labor ~~or~~,
14 materials, plans, or specifications furnished after the late notice is actually received
15 by the owner. The burden of proving that labor ~~or~~, materials, plans, or specifications
16 for which a lien is claimed were furnished after that date is on the lien claimant.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

17 **SECTION 17.** 779.02 (5) of the statutes is amended to read:

18 779.02 (5) THEFT BY CONTRACTORS. The proceeds of any mortgage on land paid
19 to any prime contractor or any subcontractor for improvements upon the mortgaged
20 premises, and all moneys paid to any prime contractor or subcontractor by any owner
21 for improvements, constitute a trust fund only in the hands of the prime contractor
22 or subcontractor to the amount of all claims due or to become due or owing from the
23 prime contractor or subcontractor for labor ~~and~~, materials, plans, and specifications
24 used for the improvements, until all the claims have been paid, and shall not be a

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1 trust fund in the hands of any other person. The use of any such moneys by any prime
2 contractor or subcontractor for any other purpose until all claims, except those which
3 are the subject of a bona fide dispute and then only to the extent of the amount
4 actually in dispute, have been paid in full or proportionally in cases of a deficiency,
5 is theft by the prime contractor or subcontractor of moneys so misappropriated and
6 is punishable under s. 943.20. If the prime contractor or subcontractor is a
7 corporation, limited liability company, or other legal entity other than a sole
8 proprietorship, such misappropriation also shall be deemed theft by any officers,
9 directors ~~or, members, partners, or agents of the corporation~~ responsible for the
10 misappropriation. Any of such misappropriated moneys which have been received
11 as salary, dividend, loan repayment, capital distribution or otherwise by any
12 shareholder ~~of the corporation, member, or partner~~ not responsible for the
13 misappropriation shall be a civil liability of ~~the shareholder~~ that person and may be
14 recovered and restored to the trust fund specified in this subsection by action brought
15 by any interested party for that purpose. Except as provided in this subsection, this
16 section does not create a civil cause of action against any ~~other person~~ other than the
17 prime contractor or subcontractor to whom such moneys are paid. Until all claims
18 are paid in full, have matured by notice and filing or have expired, such proceeds and
19 moneys shall not be subject to garnishment, execution, levy or attachment.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

20 **SECTION 18. 779.03 (1) of the statutes is amended to read:**

21 **779.03 (1) NO AGREEMENT BY OTHER THAN CLAIMANT MAY INVALIDATE LIEN.** Subject
22 to s. 779.05, a lien claimant may waive the lien given by s. 779.01 by a writing signed
23 by the lien claimant, but no action by nor agreement between any other persons shall

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1 invalidate the lien, other than payment in full to the claimant for the labor or,
2 materials, plans, or specifications to which the lien claim relates.

History: 1973 c. 230; 1979 c. 32 ss. 57, 92 (9); Stats. 1979 s. 779.03; 1993 a. 486.

3 **SECTION 19. 779.035 (1)** of the statutes is amended to read:

4 779.035 (1) To eliminate lien rights as provided in s. 779.03 (2), the contract
5 between the owner and the prime contractor for the construction of the improvement
6 shall contain a provision for the payment by the prime contractor of all claims for
7 labor performed and materials or, plans, or specifications furnished, used or
8 consumed, except plans or specifications furnished by the architect, professional
9 engineer or surveyor employed by the owner, in making such improvement and
10 performing the work of improvement. The contract shall not be effective to eliminate
11 lien rights unless the prime contractor gives a bond issued by a surety company
12 licensed to do business in this state. The bond shall carry a penalty for unpaid claims
13 of not less than the contract price, and shall be conditioned for the payment to every
14 person entitled thereto of all the claims for labor performed, and materials, plans,
15 or specifications furnished under the contract and subsequent amendments thereto,
16 to be used or consumed in making the improvement or performing the work of
17 improvement as provided in the contract and subsequent amendments thereto. The
18 bond shall be approved by the owner and by any mortgage lender furnishing funds
19 for the construction of the improvement. No assignment, modification or change in
20 the contract, or change in the work covered thereby, or any extension of time for
21 completion of the contract shall release the sureties on the bond.

History: 1973 c. 230; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.035; 1991 a. 200; 1993 a. 213; 1995 a. 395.

22 **SECTION 20. 779.035 (2) (b) 1.** of the statutes is amended to read:

23 779.035 (2) (b) 1. Except as provided in subd. 2., a subcontractor or supplier
24 may maintain an action under par. (a) only if the subcontractor or supplier has

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1 notified the prime contractor in writing that the subcontractor or supplier was
2 providing labor ~~or~~, materials, plans, or specifications for the construction of the
3 improvement. The notice must be provided no later than 60 days after the date on
4 which the subcontractor or supplier first provided the labor ~~or~~, materials, plans, or
5 specifications.

History: 1973 c. 230; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.035; 1991 a. 200; 1993 a. 213; 1995 a. 395.

6 **SECTION 21.** 779.035 (2) (b) 2. a. of the statutes is amended to read:

7 779.035 (2) (b) 2. a. The contract for the provision of the labor ~~or~~, materials,
8 plans, or specifications does not exceed \$5,000.

History: 1973 c. 230; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.035; 1991 a. 200; 1993 a. 213; 1995 a. 395.

9 **SECTION 22.** 779.035 (3) of the statutes is amended to read:

10 779.035 (3) In any case in which the improvement contract and bond have been
11 prepared and executed pursuant to sub. (1) upon inquiry by any subcontractor,
12 ~~materialman~~ supplier, laborer or mechanic furnishing labor ~~or~~, materials, plans, or
13 specifications for said improvement, the prime contractor and the owner shall so
14 advise the person making the inquiry and shall give the person reasonable
15 opportunity to inspect and examine the contract and bond.

History: 1973 c. 230; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.035; 1991 a. 200; 1993 a. 213; 1995 a. 395.

16 **SECTION 23.** 779.036 (1) of the statutes is amended to read:

17 779.036 (1) In any case in which an improvement is constructed or to be
18 constructed pursuant to a contract and payment bond under s. 779.035, any person
19 furnishing labor or materials or plans or specifications to be used or consumed in
20 making the improvement, to any prime contractor or subcontractor shall have a lien
21 on the money or other payment due or to become due the prime contractor or
22 subcontractor therefor, if the lienor, before payment is made to the prime contractor
23 or subcontractor, ~~gives~~ serves a written notice of the lienor's claim ~~by registered mail~~
24 ~~with return receipt requested to~~ on the owner or authorized agent and ~~to~~ on any

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1 mortgage lender furnishing funds for the construction of the improvement. Upon
2 receipt of the notice, the owner and lender shall assure that a sufficient amount is
3 withheld to pay the claim and, when it is admitted by the prime contractor or
4 subcontractor involved or established under sub. (3), shall pay the claim and charge
5 it to the prime contractor or subcontractor as appropriate. Any owner or lender
6 violating this duty shall be liable to the claimant for the damages resulting from the
7 violation. There shall be no preference among lienors serving such notices.

8 **History:** 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (11); 1979 c. 176; Stats. 1979 s. 779.036.

SECTION 24. 779.036 (2) of the statutes is amended to read:

9 779.036 (2) A copy of the notice provided in sub. (1) also shall be served by the
10 lienor, within 7 days after service of the notice upon the owner and lender, upon the
11 prime contractor or subcontractor ~~by registered mail with return receipt requested.~~

12 **History:** 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (11); 1979 c. 176; Stats. 1979 s. 779.036.

SECTION 25. 779.036 (3) of the statutes is amended to read:

13 779.036 (3) If the prime contractor or subcontractor does not dispute the claim
14 within 30 days after service of written notice under sub. (2), ~~by registered mail with~~
15 ~~return receipt requested to the owner and lender,~~ the amount claimed shall be paid
16 over to the claimant on demand and charged to the prime contractor or subcontractor
17 pursuant to sub. (1). If the prime contractor or subcontractor disputes the claim, the
18 right to a lien and to the moneys in question shall be determined in an action brought
19 by the claimant or the prime contractor or subcontractor. If the action is not brought
20 within 3 months from the time the notice required by sub. (1) is served, the lien rights
21 under this section are barred.

22 **History:** 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (11); 1979 c. 176; Stats. 1979 s. 779.036.

SECTION 26. 779.036 (4) (a) of the statutes is amended to read:

23 779.036 (4) (a) When the total lien claims exceed the sum due the prime
24 contractor or subcontractor concerned and where the prime contractor or

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1 subcontractor has not disputed the amounts of the claims filed, the owner with the
2 concurrence of the lender shall determine on a proportional basis who is entitled to
3 the amount being withheld and shall ~~notify~~ serve a written notice of the
4 determination on all claimants and the prime contractor or subcontractor ~~in writing~~
5 ~~of the determination~~. Unless an action is commenced by a claimant or by the prime
6 contractor or subcontractor within 20 days after the ~~mailing~~ service of said notice,
7 the money shall be paid out in accordance with the determination and the liability
8 of the owner and lender to any claimant shall cease.

History: 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (11); 1979 c. 176; Stats. 1979 s. 779.036.

9 **SECTION 27. 779.05 (1)** of the statutes is amended to read:

10 779.05 (1) Any document signed by a lien claimant or potential claimant and
11 purporting to be a waiver of construction lien rights under this subchapter, is valid
12 and binding as a waiver whether or not consideration was paid therefor and whether
13 the document was signed before or after the labor ~~or material~~ was, ^{for} materials, plans,
14 or specifications were furnished or contracted for. Any ambiguity in such document
15 shall be construed against the person signing it. Any waiver document shall be
16 deemed to waive all lien rights of the signer for all labor ~~and~~ materials, plans, and
17 specifications furnished or to be furnished by the claimant at any time for the
18 improvement to which the waiver relates, except to the extent that the document
19 specifically and expressly limits the waiver to apply to a particular portion of such
20 labor ~~and~~ materials, plans, and specifications. A lien claimant or potential lien
21 claimant of whom a waiver is requested is entitled to refuse to furnish a waiver
22 unless paid in full for the work ~~or material~~ materials, plans, or specifications to

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1 which the waiver relates. A waiver furnished is a waiver of lien rights only, and not
2 of any contract rights of the claimant otherwise existing.

History: 1979 c. 32 s. 57; Stats. 1979 s. 779.05.

3 **SECTION 28.** 779.06 (1) of the statutes is amended to read:

4 779.06 (1) No lien under s. 779.01 shall exist and no action to enforce a lien
5 under s. 779.01 shall be maintained unless within 6 months from the date the lien
6 claimant furnished the last labor or, materials, plans, or specifications, a claim for
7 the lien is filed in the office of the clerk of circuit court of the county in which the lands
8 affected by the lien lie, and unless within 2 years from the date of filing a claim for
9 lien an action is brought and summons and complaint filed. A lien claimant shall
10 serve a copy of the claim for lien on the owner of the property on which the lien is
11 placed within 30 days after filing the claim. A claim for a lien may be filed and
12 entered in the judgment and lien docket, and action brought, notwithstanding the
13 death of the owner of the property affected by the action or of the person with whom
14 the original contract was made, with like effect as if he or she were then living.

History: 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.06; 1995 a. 224.

15 **SECTION 29.** 779.06 (2) of the statutes is amended to read:

16 779.06 (2) No lien claim may be filed or action brought thereon unless, at least
17 30 days before timely filing of the lien claim, the lien claimant serves on the owner,
18 ~~personally or by registered mail with return receipt requested,~~ a written notice of
19 intent to file a lien claim. The notice is required to be given whether or not the
20 claimant has been required to and has given a previous notice pursuant to s. 779.02.
21 Such notice shall briefly describe the nature of the claim, its amount and the land
22 and improvement to which it relates.

History: 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.06; 1995 a. 224.

23 **SECTION 30.** 779.06 (3) of the statutes is amended to read:

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1 779.06 (3) Such a claim for lien shall have attached thereto a copy of any notice
2 given in compliance with s. 779.02 and a copy of the notice given in compliance with
3 sub. (2), and shall contain a statement of the contract or demand upon which it is
4 founded, the name of the person against whom the demand is claimed, the name of
5 the claimant and any assignee, the last date of the performance of any labor or the
6 furnishing of any materials, plans, or specifications, a legal description of the
7 property against which the lien is claimed, a statement of the amount claimed and
8 all other material facts in relation thereto. Such claim document shall be signed by
9 the claimant or attorney, need not be verified, and in case of action brought, may be
10 amended, as pleadings are.

History: 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.06; 1995 a. 224.

11 **SECTION 31.** 779.07 (1) (d) of the statutes is amended to read:

12 779.07 (1) (d) Last date of performance of labor or furnishing materials, plans,
13 or specifications.

History: 1979 c. 32 s. 57; Stats. 1979 s. 779.07; 1993 a. 486; 1995 a. 224.

14 **SECTION 32.** 779.08 (1) of the statutes is amended to read:

15 779.08 (1) The person against whom a lien is claimed or any other interested
16 party may file with the clerk of court in whose office the claim for lien is filed an
17 undertaking executed by ~~2 or more sufficient sureties~~ a surety to the effect that the
18 person against whom the lien is claimed shall pay the amount of the claim and all
19 costs and damages which may be awarded against that person on account of the lien
20 or in lieu thereof deposit with the clerk of the court a sum of money, certified check
21 or negotiable government bonds in par value equal to 125% of the claim for lien. The
22 court in which any action to foreclose the lien may be brought shall determine any
23 question of sufficiency of the ~~sureties~~ surety if exception is taken thereto by the lien
24 claimant within 10 days after notice of the filing of such undertaking or deposit of

BILL**SECTION 32**

1 other security and may upon notice and upon motion of any party, order any sum of
2 money deposited to be invested. The clerk of court shall remove the lien from the
3 judgment and lien docket upon the court's order approving the surety in substitution
4 for the lien. The depositor shall be entitled to any income from the investments,
5 certified check or negotiable U.S. government bonds deposited and the clerk shall
6 pay the income to the depositor without order when received or, in the case of
7 coupons, as the income becomes due.

History: 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.08.

8 **SECTION 33.** 779.08 (2) of the statutes is amended to read:

9 779.08 (2) If an undertaking is furnished, it shall be accompanied by the
10 ~~affidavits~~ affidavit of the ~~sureties~~ surety in which each states that the surety is
11 worth, over and above all debts and liabilities in property within this state not
12 exempt from execution, an amount in the aggregate equal to 125% or more of the
13 amount of the claim for lien.

History: 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.08.

14 **SECTION 34.** 779.10 of the statutes is amended to read:

15 **779.10 Judgment.** The judgment shall adjudge the amount due to each
16 claimant who is a party to the action. It shall direct that the interest of the owner
17 in the premises at the commencement of the work or furnishing the materials, plans,
18 or specifications for which liens are given and which the owner has since acquired,
19 or so much thereof as is necessary, be sold to satisfy the judgment, and that the
20 proceeds be brought into court with the report of sale to abide the order of the court.
21 If the premises can be sold in parcels without injury to the parties, the court may
22 adjudge that the sale be so made. If the plaintiff fails to establish a lien upon the

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1 premises but does establish a right to recover for labor ~~or~~, materials, plans, or
2 specifications, the plaintiff may have a judgment against the party liable.

History: 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.10. ✓

3 **SECTION 35.** 779.135 (1) of the statutes is amended to read:

4 779.135 (1) Provisions requiring a contractor, subcontractor or ~~material~~ ✓
5 supplier to waive his or her right to a construction lien or to a claim against a
6 payment bond before he or she has been paid for the labor ~~or~~, materials ~~or both~~, plans,
7 or specifications that he or she furnished.

History: 1993 a. 213 ss. 164, 165; Stats. 1993 s. 779.135. ✓

8 **SECTION 36.** 779.14 (1) (a) of the statutes is amended to read:

9 779.14 (1) (a) Any person who has a direct contractual relationship, expressed
10 or implied, with the prime contractor or with any subcontractor of the prime
11 contractor to perform labor or furnish materials, plans, or specifications, except as
12 provided in par. (b).

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167. ✓

13 **SECTION 37.** 779.14 (1) (b) of the statutes is amended to read:

14 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) for
15 highway improvements, any person who has a direct contractual relationship,
16 expressed or implied, with the prime contractor to perform labor or furnish
17 materials, plans, or specifications.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167. ✓

18 **SECTION 38.** 779.14 (1e) (a) of the statutes is amended to read:

19 779.14 (1e) (a) All contracts involving \$10,000 or more for ~~the performance of~~
20 furnishing labor or furnishing, materials, plans, or specifications, when the same
21 pertains to any public improvement or public work shall contain a provision for the
22 payment by the prime contractor of all claims for labor performed and materials,
23 plans, or specifications furnished, used or consumed in making the public

BILL

SECTION 38

1 improvement or performing the public work, including, ~~without limitation because~~
2 ~~of enumeration~~, fuel, lumber, building materials, machinery, vehicles, tractors,
3 equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline,
4 motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's
5 compensation insurance and contributions for unemployment insurance.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

6 **SECTION 39.** 779.14 (1e) (b) of the statutes is amended to read:

7 779.14 (1e) (b) All contracts that are in excess of \$30,000, as indexed under sub.
8 (1s), and that are for the performance of labor or furnishing materials, plans, or
9 specifications for a public improvement or public work shall contain a provision
10 under which the prime contractor agrees, to the extent practicable, to maintain a list
11 of all subcontractors and suppliers performing labor or furnishing materials, plans,
12 or specifications under the contract.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

13 **SECTION 40.** 779.14 (1m) (c) (intro.) of the statutes is amended to read:

14 779.14 (1m) (c) (intro.) *State contracts.* The following requirements apply to
15 contracts with the state for the performance of labor or furnishing materials, plans,
16 or specifications for a public improvement or public work:

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

17 **SECTION 41.** 779.14 (1m) (d) (intro.) of the statutes is amended to read:

18 779.14 (1m) (d) *Local government contracts.* (intro.) The following
19 requirements apply to contracts, other than contracts with the state, for the
20 performance of labor or furnishing materials, plans, or specifications for a public
21 improvement or public work:

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

22 **SECTION 42.** 779.14 (1m) (e) 2. b. of the statutes is amended to read:

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1 779.14 (1m) (e) 2. b. The payment to every person, including every
2 subcontractor or supplier, of all claims that are entitled to payment for labor
3 performed and materials, plans, or specifications furnished for the purpose of
4 making the public improvement or performing the public work as provided in the
5 contract and sub. (1e) (a).

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

6 **SECTION 43.** 779.14 (2) (a) 2. of the statutes is amended to read:

7 779.14 (2) (a) 2. Except as provided in subd. 3., failure of the prime contractor
8 or a subcontractor of the prime contractor to comply with a contract, whether express
9 or implied, with a subcontractor or supplier for the performance of labor or
10 furnishing of materials, plans, or specifications for the purpose of making the public
11 improvement or performing the public work that is the subject of the contract with
12 the governmental entity.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

13 **SECTION 44.** 779.14 (2) (a) 3. of the statutes is amended to read:

14 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) for
15 highway improvements, failure of the prime contractor to comply with a contract,
16 whether express or implied, with a subcontractor or supplier of the prime contractor
17 for the performance of labor or furnishing of materials, plans, or specifications for the
18 purpose of making the highway improvement that is the subject of the contract with
19 the governmental entity.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

20 **SECTION 45.** 779.14 (2) (am) 1. of the statutes is amended to read:

21 779.14 (2) (am) 1. Except as provided in subd. 2., a subcontractor or supplier
22 may maintain an action under par. (a) only if the subcontractor or supplier has
23 notified served a written notice on the prime contractor ~~in writing~~ that the

BILL**SECTION 45**

1 subcontractor or supplier has provided or will provide labor ~~or~~, materials, plans, or
2 specifications to the public work or improvement. The notice must be provided
3 served no later than 60 days after the date on which the subcontractor or supplier
4 first provided the labor ~~or~~, materials, plans, or specifications.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

5 **SECTION 46.** 779.14 (2) (am) 2. a. of the statutes is amended to read:

6 779.14 (2) (am) 2. a. The contract for the provision of the labor ~~or~~, materials,
7 plans, or specifications does not exceed \$5,000.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

8 **SECTION 47.** 779.14 (3) of the statutes is amended to read:

9 779.14 (3) ACTIONS BY A COUNTY. In an action by a county upon the bond all
10 persons for whose protection it was given and who make claim thereunder may be
11 joined in the action. The county highway commissioner may take assignments of all
12 demands and claims for labor ~~or material~~, materials, plans, or specifications and
13 enforce the same in the action for the benefit of the assignors, and the judgment may
14 provide the manner in which the assignors shall be paid.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167.

15 **SECTION 48.** 779.15 (1) of the statutes is amended to read:

16 779.15 (1) Any person furnishing labor ~~or~~, materials, plans, or specifications
17 to be used or consumed in making public improvements or performing public work,
18 including fuel, lumber, building materials, machinery, vehicles, tractors, equipment,
19 fixtures, apparatus, tools, appliances, supplies, electrical energy, gasoline, motor oil,
20 lubricating oil, greases, state imposed taxes, premiums for worker's compensation
21 insurance and contributions for unemployment insurance, to any prime contractor,
22 except in cities of the 1st class, shall have a lien on the money or bonds or warrants
23 due or to become due the prime contractor therefor, if the lienor, before payment is

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1 made to the prime contractor, ~~gives~~ serves a written notice ~~to~~ of the claim on the
2 debtor state, county, town, or municipality ~~of the claim~~. The debtor shall withhold
3 a sufficient amount to pay the claim and, when it is admitted by the prime contractor
4 or established under sub. (3), shall pay the claim and charge it to the prime
5 contractor. Any officer violating the duty hereby imposed shall be liable on his or her
6 official bond to the claimant for the damages resulting from the violation. There shall
7 be no preference between the lienors serving the notices.

History: 1975 c. 147 s. 54; 1975 c. 199, 224, 422; 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.15; 1997 a. 39.

8 **SECTION 49.** 779.15 (2) of the statutes is amended to read:

9 779.15 (2) Service of the notice under sub. (1) shall be made ~~by registered mail~~
10 upon the clerk of the municipality or in the clerk's absence upon the treasurer. If any
11 of the money due the prime contractor is payable by the state, service of the notice
12 under sub. (1) shall be served ~~by registered mail~~ upon the state department, board,
13 or commission having jurisdiction over the work. A copy of the notice shall be served
14 concurrently ~~by registered mail~~ upon the prime contractor.

History: 1975 c. 147 s. 54; 1975 c. 199, 224, 422; 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.15; 1997 a. 39.

15 **SECTION 50.** 779.15 (3) of the statutes is amended to read:

16 779.15 (3) If a valid lien exists under sub. (1) and the prime contractor does not
17 dispute the claim within 30 days after service on the prime contractor of the notice
18 provided in sub. (2), by serving written notice ~~to~~ on the debtor state, county, town,
19 or municipality and the lien claimant, the amount claimed shall be paid over to the
20 claimant on demand and charged to the prime contractor pursuant to sub. (1). If the
21 prime contractor disputes the claim, the right to a lien and to the moneys in question
22 shall be determined in an action brought by the claimant or the prime contractor.
23 If the action is not brought within 3 months from the time the notice required by sub.

BILL**SECTION 50**

(1) is served, and notice of bringing the action filed with the officer with whom the claim is filed, the lien rights are barred.

History: 1975 c. 147 s. 54; 1975 c. 199, 224, 422; 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.15; 1997 a. 39.

SECTION 51. 779.15 (4) (a) of the statutes is amended to read:

779.15 (4) (a) When the total of the lien claims exceeds the sum due the prime contractor and where the prime contractor has not disputed the amounts of the claims filed, the debtor state, county, town or municipality, through the officer, board, department or commission with whom the claims are filed, shall determine on a proportional basis who is entitled to the money and shall notify all claimants and the prime contractor in writing of the determination. Unless an action is commenced by a claimant or by the prime contractor within 20 days after the mailing of the notice, the money shall be paid out in accordance with the determination and the liability of the state, county, town or municipality to any lien claimant shall cease.

History: 1975 c. 147 s. 54; 1975 c. 199, 224, 422; 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.15; 1997 a. 39.

SECTION 52. 779.16 of the statutes is amended to read:

779.16 Theft by contractors. All moneys, bonds or warrants paid or to become due to any prime contractor or subcontractor for public improvements are a trust fund only in the hands of the prime contractor or subcontractor to the amount of all claims due or to become due or owing from the prime contractor or subcontractor for labor and materials used for the improvements, until all the claims have been paid, and shall not be a trust fund in the hands of any other person. The use of the any such moneys by the any prime contractor or subcontractor for any other purpose other than the payment of claims on such public improvement, before the until all claims have been satisfied, constitutes, except those which are the subject of a bona fide dispute and then only to the extent of the amount actually in dispute, have been paid in full or proportionally in cases of a deficiency, is theft by the prime contractor

BILL

1 or subcontractor of moneys so misappropriated and is punishable under s. 943.20.
2 This If the prime contractor or subcontractor is a corporation, limited liability
3 company, or other legal entity other than a sole proprietorship, such
4 misappropriation also shall be deemed theft by any officers, directors, members,
5 partners, or agents responsible for the misappropriation. Any of such
6 misappropriated moneys which have been received as salary, dividend, loan
7 repayment, capital distribution or otherwise by any shareholder, member, or partner
8 not responsible for the misappropriation shall be a civil liability of that person and
9 may be recovered and restored to the trust fund specified in this subsection by action
10 brought by any interested party for that purpose. Except as provided in this
11 subsection, this section shall not create a civil cause of action against any person
12 other than the prime contractor or subcontractor to whom such moneys are paid or
13 become due. Until all claims are paid in full, have matured by notice and filing or
14 have expired, such money, bonds and warrants shall not be subject to garnishment,
15 execution, levy or attachment.

History: 1973 c. 231; 1975 c. 409; 1979 c. 32 s. 57; Stats. 1979 s. 779.16.

SECTION 53. Initial applicability.

17 (1) This act first applies to labor, materials, plans, and specifications that are
18 provided on the effective date of this subsection.

19 (END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2227/1dn

MDK: *leg*

Date

Sen. Zien:

Please note the following about this bill:

X 1. I eliminated reference to the last known address in s. 779.02 (2) (b), to be consistent with other provisions referring to service that don't mention the last known address. Is that okay, or should the bill specify that if service is by mail, service must be to last known address? See also my changes to 779.14 (2) (am) 1. and 779.15 (1) and (3), which are not mentioned in the instructions. However, I did not change s. 779.155 (5) (a). Okay? *ss.* *the*

2. Note that I made changes to the definition of "serve" or "served" that is proposed in the instructions.

3. In addition to the statutes you specified, I also changed references to "materialmen" in ss. 59.40 (2) (f), 66.0901 (2), and 703.22 (title), (2), and (3). Is that okay? *(a)*

X 4. I deleted "without limitation because of enumeration" in s. 779.14 (1e) and did not include it in s. 779.01 (3) and 779.15 (1). Under our current drafting style, we do not include such language because it is redundant.

X 5. The instructions regarding scope of lienable work specify that the following statutes should be harmonized: ss. 779.036 (2), (3), and (4) (a), 779.06 (2), and 779.15 (2). However, I don't understand what is supposed to be harmonized. Please contact me if you wish to discuss this issue. Also note that the draft harmonizes the following additional statutes that are not mentioned in the instructions: ss. 779.02 (1) (c) and (e) and (5), 779.03 (1), 779.035 (1), (2) (b) 1. and 2. a., and (3), 779.05 (1), 779.06 (1) and (3), 779.07 (1) (d), 779.10, 779.135 (1), 779.14 (1) (a) and (b), (1e) (a) and (b), (1m) (c), (d), and (e) 2. b., (2) (a) 2. and 3., (am) 1. and 2. a., and (3), and 779.15 (1). Are my additional changes okay?

6. Is the initial applicability provision okay? Also, do you want to delay the effective date of the bill to give people time to change their business practices to comply with the new requirements?

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2227/1dn
MDK:kjfrs

April 22, 2005

Sen. Zien:

Please note the following about this bill:

1. I eliminated reference to the last-known address in s. 779.02 (2) (b), to be consistent with other provisions referring to service that don't mention the last-known address. Is that okay, or should the bill specify that if service is by mail, service must be to the last-known address? See also my changes to ss. 779.14 (2) (am) 1. and 779.15 (1) and (3), which are not mentioned in the instructions. However, I did not change s. 779.155 (5) (a). Okay?
2. Note that I made changes to the definition of "serve" or "served" that is proposed in the instructions.
3. In addition to the statutes you specified, I also changed references to "materialmen" in ss. 59.40 (2) (f), 66.0901 (2), and 703.22 (title), (2), and (3). Is that okay?
4. I deleted "without limitation because of enumeration" in s. 779.14 (1e) (a) and did not include it in ss. 779.01 (3) and 779.15 (1). Under our current drafting style, we do not include such language because it is redundant.
5. The instructions regarding scope of lienable work specify that the following statutes should be harmonized: ss. 779.036 (2), (3), and (4) (a), 779.06 (2), and 779.15 (2). However, I don't understand what is supposed to be harmonized. Please contact me if you wish to discuss this issue. Also note that the draft harmonizes the following additional statutes that are not mentioned in the instructions: ss. 779.02 (1) (c) and (e) and (5), 779.03 (1), 779.035 (1), (2) (b) 1. and 2. a., and (3), 779.05 (1), 779.06 (1) and (3), 779.07 (1) (d), 779.10, 779.135 (1), 779.14 (1) (a) and (b), (1e) (a) and (b), (1m) (c), (d), and (e) 2. b., (2) (a) 2. and 3., (am) 1. and 2. a., and (3), and 779.15 (1). Are my additional changes okay?
6. Is the initial applicability provision okay? Also, do you want to delay the effective date of the bill to give people time to change their business practices to comply with the new requirements?

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Kunkel, Mark

From: Deschane, Brian
Sent: Monday, September 19, 2005 4:30 PM
To: Kunkel, Mark
Subject: FW: Lien Law
Attachments: Zien Enclosure.doc

Mark,

Attached are the changes Senator Zien would like to see made to our Lien Law draft (LRB 2227/1). If you have any questions/comments/concerned, please let me know. Thanks.

~Brian

Brian J. Deschane
Office of Senator Dave Zien
brian.deschane@legis.state.wi.us

09/19/2005

1. Section 779.01(2)(e) – At page 6, line 10, we believe the correct statute reference should be to “s. 801.14” rather than “s. 801.11.” ✓

2. Sections 779.01(3), 779.14(1e)(a) and 779.15(1) – As part of the process to make application of lien rights more uniform, the Lien Law Committee had originally proposed making a modification of the definition of the “Extent and Character of Lien” in 779.01(3) to copy the examples of lienable work identified in 779.14(1e)(a) and 779.15(1). After further reflection and discussion, our Section recommends that the laundry list of types of “improvements” be deleted from both sections. The legislative history should clearly note that this deletion is not intended to be a limitation on what is lienable, but a means of expanding the scope of lienable “improvements” so that it remains flexible as means and methods of construction grow and develop. *add to d-note*

Under this modification, the new language added to Section 779.01(3) at p. 6, lines 15-19, and the same clauses in Section 779.14(1e)(a), p. 19, lines 11-15, and Section 779.15(1) at pp. 21-22, lines 25; 1-3, would be stricken as follows: ✓

“including fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker’s compensation insurance, and contributions for unemployment insurance.”

3. Section 779.01(3) – Additional clauses are recommended to be added to this Section to clarify that lien rights are available to design and construction professionals regardless of the method of delivery of their services. As currently written, it is arguable, for example, that surveyors, design/builders and construction managers (particularly agency CMs that supervise, but do not actually build) have no lien rights. The types of lienable activities would be expanded as follows: ✓

“779.01(3) EXTENT AND CHARACTER OF LIEN. Every person who performs any work or service, or procures its performance, manages, supervises or administers such work or service, or furnishes any labor, materials, plans, or specifications, used or consumed . . .”

It is further recommended that the foregoing change be harmonized with Sections 779.14(1e) and 779.15 by adding the word "services" as follows:

"779.14(1e)(a) All contracts involving \$10,000 or more for furnishing labor materials, services, plans or specifications, when the same pertains to any public improvement or public work shall contain a provision for the payment by the prime contractor of all claims for labor performed and materials services, plans, or specifications furnished, used or consumed in making the public improvement or performing the public work . . ."

"779.14(1e)(b) All contracts that are in excess of \$30,000, as indexed under sub. (1s), and that are for the performance of labor or furnishing materials, services, plans, or specifications for a public improvement or public work shall contain a provision under which the prime contractor agrees, to the extent practicable, to maintain a list of all subcontractors and suppliers performing labor or furnishing materials, services, plans, or specifications under the contract."

Because Section 779.15(1) parallels Section 779.01(3), it should, in addition to the amendments referred to in paragraph 2 above, also be amended as follows:

"779.15. Public improvements; lien on contractor; duty of officials. (1) Any person who performs any work or service or procures, the performance of, manages, supervises or administers such work or service . . ."

4. Section 779.02(2)(a) & (b) – In the lien notices identified in these subsections, replace the word "builder" with the word "claimant." Not every claimant is actually a builder and the statutory notice is, as a result, misleading without this modification.

5. Sections 779.01(2)(d)(2) and 779.135(3) contain references to "general contractor". Other references throughout this Chapter are to "prime contractor." There is no apparent reason for the use of both terms. Since not every prime contractor is a general contractor, it would be more accurate to use "prime contractor" in all cases. In addition, there are 13 paragraphs in Chapter 779 which refer simply to "contractor". Although in

a number of cases, the context makes it clear that "contractor" means "prime contractor", it is suggested that for the sake of consistency, "prime contractor" be used in lieu of "contractor" wherever the latter is used in each of the following paragraphs:

- a. 779.02(2) Notice to owner, lender and materialssupplier.
(c) and (d)
- b. 779.135 Construction contracts, form of contract.
(1) and (3)
- c. 779.15 Public improvements; lien on contractor; duty of officials.

The caption reference to "lien on contractor" is not correct. The lien is not on the contractor but rather on the money, bonds or warrants due or to become due the prime contractor. The title should be revised to read:

"Public improvements; lien on money, bonds or warrants due or to become due the prime contractor; duty of officials."

All other references within this section refer to "prime contractor".

- d. 779.155 Judgment creditors, attachment of funds due to public contractors.

Since Section 779.155 refers to public improvements, it is clear that the reference to "public contractors" means prime contractors, i.e., those who have direct contracts with the public entity. For consistency's sake, however, it would be better to use the term "prime contractor" or "prime contractors," as appropriate.

(2); (3); (4); (5)(b); (6); and (7)

- e. 779.17 Release of funds on filing bond.

Again, for consistency's sake, the term "prime contractor" should be use in lieu of "contractor."

In only one case (779.135(1)) is there a reference to "contractor, subcontractor or supplier". Either "contractor" should be changed to "prime contractor" as suggested above or the entire phrase should be replaced by a more generic reference. Because "person" includes both individuals and entities, the following is suggested:

"Provisions requiring any person entitled to a construction lien to waive his, her or its right to such a lien . . . (Sec 779.135(1). page 18, lines 15-16).

There are numerous instances in Chapter 779 where "prime contractor, subcontractor and supplier" is used, but they do not lend themselves to a shorthand reference and therefore they should remain as is. We do not believe it would be beneficial to suggest the possible alternative of adding categories to the list of those who might have lien rights. The statute has already addressed who has lien rights under the proposed revisions to 779.01(3) as noted above. ✓

6. 779.01(3) Extent and Character of Lien.

The words "to be" were deleted here but remain in 779.15. For consistency, both sections should either include or exclude these words. ✓

7. 779.02(2) Notice to owner, lender and materialssupplier.

(b) The "60 day" notice (now referred to as the "identification notice") currently requires the notice to be given to the owner at its "last-known post-office address". This phrase is deleted in the draft bill. This phrase should be re-inserted since a lien claimant may not know the owner's current address and it would be unduly burdensome for the claimant to have to determine the current address. Moreover, the time expended in trying to identify the current address may cause the notice to be untimely, thus jeopardizing the claimant's lien.

→ necessary?
d-note
(dying
"service"
under
801.14)

8. 779.16 Theft by contractors.

One of the proposed changes to 779.02(5) (the private theft by contractor provision) is to include the phrase "plans and specifications". This proposed change should be harmonized with it's public lien counterpart, 779.16. ✓

9. We have discussed issues that may arise concerning the effective date of adoption of the legislation on construction projects pending at that date. For example, consider a project that is started before the legislation is adopted and finished after it has become law. Since first visible commencement of construction, the triggering date for determining lien priority among other claimants to the real property title, occurred before the legislation was adopted, it could be argued that the newly adopted provisions do not apply to this project. Conversely, it could be argued that since the construction was not completed until after the legislation was adopted, it should be applied for the entire project (relating back to dates on which the legal obligations created by the new legislation could not have been known by the prime contractor or claimant). To avoid this potential for confusion in the application of this legislation, it should clearly state that it applies to all projects "having a first visible commencement on or after the date of adoption of the legislation."